

VZCZCXRO5417
PP RUEHMA RUEHPA
DE RUEHUJA #1997/01 3041115
ZNR UUUUU ZZH
P 311115Z OCT 09
FM AMEMBASSY ABUJA
TO RUEHC/SECSTATE WASHDC PRIORITY 7377
INFO RUEHOS/AMCONSUL LAGOS 2205
RUEHJO/AMCONSUL JOHANNESBURG 0106
RUEHZK/ECOWAS COLLECTIVE
RHEBAAA/DEPT OF ENERGY WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RUCPDO/DEPT OF COMMERCE WASHDC
RUEHRC/DEPT OF AGRICULTURE WASHDC

UNCLAS SECTION 01 OF 03 ABUJA 001997

SENSITIVE
SIPDIS

DEPT PASS AID AFR/SD FOR CURTIS, ATWOOD AND SCHLAGENHAUF
DEPT PASS TO USTDA-PAUL MARIN, EXIM-JRICHTER
DEPT PASS TO USTR-AGAMA
JOHANNESBURG FOR NAGY
USDOE FOR GEORGE PERSON
TREASURY FOR IERONIMO, BARCAN, SOLOMON AND RITTERHOFF
DOC FOR 3317/ITA/OA/BURRESS AND 3130/USFC/OIO/ANESA/REED

E.O. 12958: N/A
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SUBJECT: LOCAL CONTENT BILL COULD BE SIGNED INTO LAW BY
MID-NOVEMBER

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¶1. (SBU) SUMMARY. The Senate and the House have passed competing versions of the Nigerian Content Development Bill, with the main difference being a requirement for operators to maintain bank accounts in Nigeria with at least ten percent of their total revenue and to contribute up to one percent of their project costs to the Nigerian Content Development Fund. Nevertheless, the texts are expected to be reconciled and a bill signed into law year's end.
END SUMMARY.

¶2. (SBU) The Nigerian Content Development Bill (NCDB) was passed in the Senate on April 17, 2008, and by the House of Representatives on October 22, 2009. The Senate and House versions are being reconciled and completion is expected by November 15, 2009. The Bill is designed to enhance local participation in Nigeria's oil and gas sector, and has important implications for operators, contractors, subcontractors, and financial and legal service providers. It is a companion piece to the Petroleum Industry Bill.

¶3. (U) The Nigerian Content Development Bill would require a minimum Nigerian content for front-end engineering (FEED) and detailed engineering and other engineering services (onshore facilities), offshore facilities, shallow water (90 percent); FEED and detailed engineering on Liquefied Natural Gas (LNG) facilities (50 percent); FEED and detailed engineering on gas gathering (90 percent); FEED and detailed engineering on deep offshore facilities-hull and topside modules (80 percent); and floating concrete structures (80 percent). For under well and drilling facilities, the bill would require the following: reservoir services (75 percent), well completion services (80 percent), logging while drilling services (45 percent), well watch services (70 percent), fluid/bottom hole sampling services (80 percent) and OCT services (cleaning, hardbanding, recutting, re-threading, and storage)(95 percent).

PREVIOUS EFFORTS TO INCREASE LOCAL CONTENT

¶4. (SBU) GON support for local content can be traced back to the Petroleum Act of 1969, which is the principal statute regulating the oil and gas sector. Under the act, holders of oil mining leases are

required to ensure that 75 percent of the total number of persons employed in managerial, professional and supervisory grades, or any corresponding grades designated in a manner approved by the Minister of Petroleum Resources, are Nigerian within 10 years of the grant of the lease. Further, no less than 60 percent of employees in any one of these grades must be Nigerian, and all skilled, semi-skilled and unskilled workers must be Nigerian. Other steps in this direction include the Petroleum Regulations of 1969; incorporated language in joint ventures and production sharing contracts to encourage Nigerian content; establishment of the Petroleum Training Institute in 1972 and the Petroleum Technology Fund in 1973; issuance of Guidelines with Respect to Release of Nigerian Workers from employment in the Petroleum Industry and Utilization Quota in 1997; Qemployment in the Petroleum Industry and Utilization Quota in 1997; and development of the Marginal Field Program in 2001.

SIGNIFICANT ISSUES TO BE RESOLVED

15. (SBU) There are 13 significant items for reconciliation between the Senate and House versions, according to the Oil Producers Trade Section (OPTS) of the Lagos Chamber of Commerce and Industry. The most important are that all operators shall maintain bank accounts in Nigeria of a minimum of 10 percent of total revenue and pay 0.5-1.0 percent of project costs as contributions to the Nigerian Content Development Fund. A summary of the significant items follows with the Senate language presented first and the House language second.

--Nigerian independent operators shall be given first consideration.
Senate: or preferential consideration. House: in the award of oil blocks and oil field licenses, oil lifting licenses, and in all projects for which contract is to be awarded in Nigeria.

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--Penalty. Senate: an operator, who carries out any project contrary to the provisions of this Act, commits an offence and is liable upon conviction to a fine of 5 percent of the project sum or cancellation of the project where applicable. House: removed where there is an applicable clause on project cancellation.

--Nigerian Content Development Fund. Senate: 1 percent of project costs shall be contributed to the fund. House: 0.5 percent of project costs shall be contributed to the fund. (NOTE: This is another example of taxation that the international companies are citing as a problem with the PIB. END NOTE.)

--Definition of a Nigerian Company. Senate: a company fully owned by Nigerians. House: a company owned 51 percent by Nigerians.

--Nigerian Content Development Bill (NCDB) Minimum Content Schedule
1A. Senate: NCDB shall set the minimum content for the project or project item pending a revision of Schedule A by the National Assembly. House: NCDB shall set the minimum content for the project or project item pending a revision of Schedule A by the Minister.

--Consideration of Nigerian Content in Commercial Bid Evaluation.
House: Included additional clauses stipulating that when bids are within 1 percent of each other, the company with the highest Nigerian Content value should be considered.

--Maintenance of bank account in Nigeria. Senate: All operators shall maintain bank account(s) in Nigeria in which they shall retain a minimum of 10 percent of their total revenue accruing from their Nigerian operations. House: Delete this clause. (NOTE: money in U.S. or other selected countries provides easier access to loans, which is not available from Nigerian banks. END NOTE.)

--Project value limit. Senate: Projects greater than \$1 million should be reviewed and approved by NCDB. House: Projects greater than naira 154 million today (naira equivalent of \$1 million).

--Establishment of a project office. Senate: Office to be in Local

Government Area. House: Office to be in Catchment Area.

--Allowance for expatriates in management position.

Senate: Operators may retain 5 percent of management positions to take care of investor interest. House: Operators may retain 5 percent of management positions, as may be approved by NCDB, to take care of investor interest.

--Regulations for further growth of Nigerian Content. Senate: Minister shall make regulations setting out targets to ensure full utilization of Nigerian companies for oil and gas services. House: Minister shall make regulations setting out targets to ensure full utilization of Nigerian companies for oil and gas services. International / multinational companies working through their Nigerian subsidiaries must insure that 50 percent of the equipment to be deployed is owned by Nigerian partners.

--Insurance and reinsurance business. Senate: All insurable risks are placed through an insurance broker or brokerage firm or an insurer registered in Nigeria under the provisions of the Insurance Act of 2003. House: All insurable risks are placed through an insurance company or an insurance broker registered in Nigeria under provision of the Insurance Act of 2003 as amended: each operator submits its insurance program every 6 months to NCDB including a comprehensive list of all insurance companies and brokers utilized in the last 6 months.

--Prohibition of welded materials. House: Removed text which grants the Nigerian Institute of Welders (NIW) control of all welding, non-destructive testing (NDT), mechanical tests, etc. activities in Nigeria.

COMMENT

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16. (SBU) Stakeholders in the oil and gas industry have doubts about the nation's ability to attain 70 percent local content by 2010. The international oil and service companies have been preparing for the 2010 deadline but admit that it will take its toll on costs, productivity, and efficiency. Minister of Petroleum Resources Rilwanu Lukman says he agrees that Nigeria needs a sustainable plan to build oil and gas sector capacity and has asked the USG for assistance.

SANDERS